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Attorney for Plaintiff, JAMES M. KINDER, an individual

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER, Plaintiff, v. HARRAH'S ENTERTAINMENT, Inc. and DOES 1 through 100, inclusive, Defendants.	Case No. 07 CV 2226 DMS (AJB) Judge: Hon. Dana M. Sabraw Mag. Judge: Hon. Anthony J. Battaglia **PLAINTIFF JAMES M. KINDER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO FILE FIRST AMENDED COMPLAINT** Date: January 25, 2008 Time: 1:30 p.m. Place: Courtroom 10

I. INTRODUCTION

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE THAT Plaintiff JAMES M. KINDER hereby submits this Memorandum of Points and Authorities in Support of his Motion to File First Amended Complaint, adding additional defendants.

II. STATEMENT OF FACTS

On October 2, 2007, Plaintiff commenced this action in San Diego Superior Court through his attorney, Chad Austin. On November 21, 2007, Defendant removed this action to this court based on diversity of citizenship. On November 30, 2007, Defendant filed a Motion to Dismiss, pursuant to Federal Rule of Civil Procedure (FRCP) 12 (b) (2), (6), alleging that this court does not have personal jurisdiction over Defendant HARRAH'S ENTERTAINMENT, Inc. That motion is set to be heard January 7, 2008 at 10:30 a.m. in Courtroom 10.

The 120 days after commencement of this action by which Plaintiff must have served all "Doe" defendants, pursuant to FRCP 4 (m) [if applied by the Court], is January 30, 2008. Therefore, if the relief sought herein is not granted, Plaintiff may forever lose the right to amend his complaint to add diverse defendants who are parties absolutely necessary to the full and final adjudication of Plaintiff's claims.

III. AUTHORITY

Leave to amend "shall be freely given when justice so requires." FRCP 15 (a). *See*, also, *Allen v. City of Beverly Hills*, (9th Cir. 1990) 911 F2d 367, 373; *Friedlander v. Nims*, (11th Cir. 1985) 755 F2d 810, 813. The policy favoring liberal granting of leave to amend serves the interests of judicial economy by allowing all possible claims against all necessary defendants to be heard together. It is clearly more efficient for the Court and all parties to allow a plaintiff to assert all causes of action against all necessary defendants together in the same proceeding. This laudable purpose would be served by allowing Plaintiff to file a First Amended Complaint, for reasons set forth below.

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IV. ARGUMENT

A. THERE ARE UNNAMED, DIVERSE "HARRAH'S" ENTITIES WHO ARE NECESSARY PARTIES TO THIS ACTION

As stated in the Declaration of Chad Austin, filed concurrently herewith, there are at least five (5) other Harrah's entities that need to be named as defendants in order to fully and finally adjudicate Plaintiff's claims in this action. Plaintiff has received 7 separate unlawful prerecorded telemarketing calls from Harrah's entities ["Harrah's Entertainment, Inc." is the umbrella company for many different "Harrah's" entities, several of which are necessary parties to this action in that the prerecorded telemarketing complained of herein relates to casinos owned by or operated by those various Harrah's entities].

Plaintiff is informed and believes that the Harrah's Rincon Casino is owned by the Rincon Band of Mission Indians and is operated by HARRAH'S ENTERTAINMENT, Inc. (a Delaware corporation) and/or HARRAH'S OPERATING COMPANY, Inc. (a Delaware corporation) and/or HARRAH'S MARKETING SERVICES CORPORATION (a Nevada corporation) and/or HARRAH'S LICENSE COMPANY, LLC (a Nevada limited liability company). One (1) of the unlawful prerecorded telemarketing calls to Plaintiff's number assigned to a paging service promoted the Harrah's Rincon Casino in Valley Center, San Diego County, California.

Plaintiff is informed and believes that HARRAH'S LAUGHLIN, Inc. (a Nevada corporation) owns and/or operates "Harrah's Laughlin Casino." Two (2) of the unlawful prerecorded telemarketing calls complained of in this action were calls promoting the Harrah's Laughlin Casino in Laughlin, Nevada.

Plaintiff is informed and believes that HARRAH'S OPERATING COMPANY, Inc. owns and/or operates "Harrah's Las Vegas Casino." Two (2) of the unlawful prerecorded telemarketing calls complained of in this action were calls promoting the Harrah's Las Vegas Casino in Las Vegas, Nevada.

Plaintiff is informed and believes that HBR REALTY COMPANY, Inc. (a Nevada corporation) owns "Harrah's Council Bluffs Casino." One (1) of the unlawful prerecorded telemarketing calls complained of in this action was a call promoting the Harrah's Council Bluffs Casino in Council Bluffs, Iowa.

Plaintiff is informed and believes that HBR REALTY COMPANY, Inc. (a Nevada corporation) owns "Harrah's Metropolis Casino." One (1) of the unlawful prerecorded telemarketing calls complained of in this action was a call promoting the Harrah's Metropolis Casino in Metropolis, Illinois.

Also, as stated in the Declaration of Chad Austin, attached hereto and incorporated herein by reference, each of the websites for the Harrah's Casinos (Harrah's Laughlin Casino, Harrah's Las Vegas Casino, Harrah's Rincon Casino, Harrah's Metropolis Casino and Harrah's Council Bluffs Casino) lists at the bottom of the page "© 2007 Harrah's License Company, LLC. All rights reserved." Therefore, Harrah's License Company, LLC is or at the very least may be a necessary party to this action.

V. CONCLUSION

The liberal policy of granting leave to amend found in the Federal Rules of Civil Procedure would clearly be served by granting this motion to file a First Amended Complaint. Granting leave to amend would also result in less expense to the parties sought herein to be named because all claims against those diverse Harrah's Entities would be adjudicated in a single action, rather than in 6 separate actions.

For these reasons, as well as all of the other reasons stated above, Plaintiff respectfully requests that this Court grant his Motion to File First Amended Complaint.

DATED: December 28, 2007

By: /s/ Chad Austin

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